

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

HAROLD PRICE et al.,

Plaintiffs,

v.

LaFaver Fiberglass Corporation et al.,

Defendants.

Case No. 23-cv-138-JFH

OPINION AND ORDER

Plaintiffs initiated this action on April 27, 2023, by filing a Petition in the District Court of Wagoner County, Oklahoma. *See* Dkt. No. 2-7. On April 27, 2023, Plaintiffs filed a Notice of Removal, seeking to remove the action to this Court. Dkt. No. 2. Plaintiffs assert that the Court has jurisdiction to hear the case under 28 U.S.C. § 1331, which provides that the United States district courts “shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” Plaintiffs also assert that removal is appropriate pursuant to 28 U.S.C. § 1441, which governs the procedure for removal of actions from state courts. Dkt. No. 2 at 4.

The Court need not decide whether it has jurisdiction based on diversity of citizenship under § 1331 because removal is precluded by § 1441. Under § 1441, the right of removal is limited to defendants. *See* § 1441 (“Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, *may be removed by the defendant or the defendants*, to the district court of the United States for the district and division embracing the place where such action is pending.” (emphasis added); *see also Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 106–09 (1941) (finding that in limiting the class of persons entitled to remove, Congress intended to preclude

removal by plaintiffs); *Am. Int'l Underwriters (Philippines), Inc. v. Cont'l Ins. Co.*, 843 F.2d 1253, 1260 (9th Cir. 1988) (“[a] plaintiff who commences his action in a state court cannot effectuate removal to a federal court even if he could have originated the action in a federal court.” (alteration in original) (internal quotation marks and citation omitted)).

The Court concludes that, even if Plaintiffs could have originated their action in this Court under § 1331, they are precluded from removing the action after it was filed in state court.

IT IS THEREFORE ORDERED that this matter is REMANDED to the District Court of Wagoner County, Oklahoma.

Dated this 1st day of May 2023.



JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE